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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 GARY ROBINSON,

10 Plaintiff,

11 vs.

12 LUIS LANDA, et al.,

13 Defendants.
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3:12-cv-00525-MMD-WGC

ORDER

re Plaintiff's Motion for Order

(Doc. # 68)

15 Before the court is Plaintiff's Motion for Order. (Doc. # 68).¹ Defendants have responded (Doc.
16 # 71.) Plaintiff has replied. (Doc. # 75.)

17 Plaintiff seeks an order directing the defendants to produce clear color photographs of Wanda
18 Robinson allegedly taken by Officer Loveless on June 21, 2011. Plaintiff bases his motion on the court's
19 order (Doc. # 56) which granted him conditional access to those photographs. (Doc. # 75 at 1.) Plaintiff
20 states "defendants produced grainy, unclear black and white photographs that are impossible to see the
21 alleged injuries to Mrs. Robinson's mouth/lip and or, bruises claimed to observed and photographed."
22 (*Id.*)

23 In response, Defendants state that they produced the black and white photographs because those
24 are the only images within the Sheriff's Office which depict Wanda Robinson. (Doc. # 71.) Defendants
25 reference their opposition to Plaintiff's motion to compel (Doc. # 69 at 6), which reflects that due to a
26 crash of the computer software which stores evidence, some photographs were lost. Defendants state that
27 the only reason they were able to produce the black and white copies was because they were able to
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¹ Refers to court's docket number.

1 locate copies of the photographs that had been placed in Plaintiff's criminal file. (Doc. # 71 at 2.)

2 In Plaintiff's reply, he "concedes that no one can produce what does not exist." (Doc. # 75 at 4.)
3 However, he then argues that the Defendants' responses to his original requests for production ("RFPs")
4 6 and 7 did not claim or inform him that there had been any system crash. (Doc. # 75 at 4.) This
5 argument, however, provides no enlightenment or assistance with regard to the instant motion. The
6 issues regarding Plaintiff's original RFPs 6 and 7 were previously addressed by the court in its order
7 (Doc. # 56) concerning Plaintiff's motion to compel (Doc. # 45).

8 Plaintiff also "charges that the original images of Mrs. Robinson are still stored within the
9 camera's S-D card." (Doc. # 71 at 4.) However, there is no evidence to substantiate this argument. This
10 contention was only raised in Plaintiff's reply memorandum, so Defendants have not addressed this
11 argument. However, Defendants have stated in both their opposition to this motion (Doc. # 71 at 2) and
12 their opposition to Plaintiff's motion to compel (Doc. # 69 at 8) that they produced the only photographs
13 in their possession. The crash of the Defendants' VeriPic software program resulting in the loss of
14 photographs is attested to in the Affidavit filed in support of Defendants' opposition to the motion to
15 compel (Doc. # 69-1).

16 Defendants cannot be ordered to produce documents which they do not possess. Nevertheless,
17 Defendants are directed to examine any "S-D card" or other electronic medium used in the camera to
18 take the subject pictures. If any additional photographs are located thereon, Defendants shall produce
19 them and provide a notice to the court.

20 Plaintiff's motion for order (Doc. # 68) is **DENIED**.

21 IT IS SO ORDERED.

22 DATED: September 10, 2014.

23 
24 WILLIAM G. COBB
25 UNITED STATES MAGISTRATE JUDGE
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